

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1608 of 2020**

Smt. Raimuni @ Smt. Raimuni Lakda W/o Shri Jogi Lakda, Aged About 45 Years, Elected Sarpanch, Gram Panchayat Tildega, R/o Village Tildega, Janpad Panchayat Patthalgaon, Tahsil And Police Station Patthalgaon, District Jashpur, Chhattisgarh ----

Petitioner

Versus

1. The State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development New Mantralaya, Mahanadi Bhawan, Atal Nagar, New Raipur, District Raipur, Chhattisgarh
2. The Commissioner, Chhattisgarh Election Commission (Local Body), New Mantralay Campus, Mahanadi Bhawan, New Raipur, Atal Nagar Raipur, Chhattisgarh
3. The Collector, District Jashpur, Chhattisgarh
4. The Sub Divisional Officer (Rev.) Cum Presiding Officer, Election Tribunal, (U/s. 122 Of The Panchayat Raj Adhiniyam), Patthalgaon, District Jashpur, Chhattisgarh
5. Mr. Mahesh Sharma, Tahsildar Cum Panchayat Election Officer, Tahsil Patthalgaon, District Jashpur, Chhattisgarh
6. Mr. Ashwani Kumar, Lecturer, Presiding Officer, Panchayat Election, Booth No. 61, Gram Panchayat Tildega, Tahsil And Police Station Patthalgaon, District Jashpur, Chhattisgarh
7. The Chief Executive Officer, Janpad Panchayat Patthalgaon, District Jashpur, Chhattisgarh
8. Smt. Indu Sidar Wife Of Shri Ghanshyam Sidar, Caste - Gond, R/o Village Tildega, Tahsil And Police Station Patthalgaon, District Jashpur, Chhattisgarh, Secured 3rd place
9. Smt. Laxmin Sidar Wife Of Shri Mahendra Sidar, R/o Village

---- Respondents

For Petitioner	:	Mr. A. N. Bhakta, Advocate
For State	:	Mr. Vivek Ranjan Tiwari, Addl. A.G. with Mateen Siddiqui, Addl. A.G.
For Respondent no.8	:	Mr. Awadh Tripathi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17.09.2020**

1. The challenge in the present writ petition is to the order dated 03.07.2020 (Annexure P-1) passed by the respondent no.4 in the election petition filed by the respondent no.8 seeking recounting of votes whereby the respondent no.4 has ordered for recounting of votes in one of the Booths i.e. Booth no.61.
2. The relevant facts for consideration of the dispute involved in the present case are that the petitioner had participated in the election of local body i.e. for the post of Sarpanch held on 03.02.2020. The results were declared on the same day and the petitioner is said to have secured the highest votes of 201 in booth no.61 whereas the respondent no.8 is said to have got only 62 votes and respondent no.9 got 130 votes. Since the petitioner is said to have got the maximum votes, he was declared as the Sarpanch of Gram Panchayat Tildega, District Jashpur.
3. Challenging the election of the petitioner the respondent no.8 preferred an election petition before the Election Tribunal making certain

allegations against the Presiding Officer as also against the petitioner in respect of voting casted at booth no.61. Notices were issued by the Election Tribunal and the parties appeared and submitted their reply. Finally, the Election Tribunal vide its order dated 03.07.2020 (Annexure P-1) allowed the election petition and ordered for recounting of votes casted at booth no.61 and delegated the power of recounting to the concerned Tahsildar.

4. It is said that the recounting was also done on 06.07.2020. Meanwhile, the present writ petition was filed and this Court vide order dated 21.07.2020, as an interim measure, stayed the effect and operation of the order passed by the Election Tribunal.
5. The primary contention of the petitioner in challenging the action on the part of the respondent authorities is that the election petition has been decided without framing issues and without granting an opportunity of leading evidence to the parties concerned.
6. According to the petitioner, the law in this regard is well settled that, in the process of hearing an election petition, the Election Tribunal has to follow the procedure, as far as possible, as prescribed under the Code of Civil Procedure. It is also the contention of the petitioner that while proceeding with an election petition, it is incumbent upon the Tribunal to have first framed issues on the disputed facts and then should have permitted the parties to lead evidence to substantiate their contentions as well as their defence that the respondents may have and only then could have decided the matter. Counsel for the petitioner relied upon the judgment of this Court in the case of Parvatia v. Padmini & Others,

2005 (2) CGLJ 335 and a series of other judgments which has been followed by this Court laying the same analogy and principles of law.

7. Counsel appearing for the respondent no.8 opposes the writ petition on the ground that the election petition has been decided in accordance to law and that a fair and reasonable opportunity was provided to the petitioner before the impugned order was passed. Moreover, the provisions under the Panchayat Raj Adhiniyam and the rules framed for conducting election petitions prescribes following the procedure laid down under the CPC as far as possible and the same cannot be applied in a straight jacket formula. Counsel for the respondent no.8 relied upon the judgment of the Division Bench of this Court in Writ Appeal no. 68/2019 whereby in an election petition which was decided without framing of issues, the Division Bench has upheld the decision of the Single Bench holding that no technical flaw as such was said to have been committed in the process of the Election Tribunal deciding a case without framing of issues when the parties were well aware of the issues on the basis of which the election petition was filed.
8. This Court recently in WPC No. 1939/2020 had an occasion dealing with a similar nature of issue and this Court considering the legal position as it stands had discussed the law so far as the rule 11 of the Rules of 1995 is concerned. In the said judgment this Court in paragraphs 8 to 15 has held as under:

“8. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to refer to Rule 11 of Rules, 1995, which for ready reference is reproduced herein:

“Rule 11. Procedure before the specified officer and his powers. (1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of the Civil Procedure, 1908 to the trial of suits :

Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.

(2) The Specified officer, shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :

- a. Discovery and inspection;
- b. Enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- c. Compelling the production of document;
- d. Examination of witnesses on oath;
- e. Reception of evidence taken on affidavit; and
- f. Issuing commission for examination of witnesses and summoning and examining suo moto any person whose evidence, appears to him to be material.”

9. A bare perusal of the aforesaid provision of law clearly requires the election Tribunal or the specified officer to conduct the election petition as if it was a case which is being conducted by a court where the Civil Procedure Code applies. It is by now well settled position of law that once when the party approaches the court and the court having seized of the matter, notices have to be issued to the opposite side and on notices being issued, the other side is required to appear and respond to the claim put forth for adjudication. The moment the respondents or the defendants enter appearance and submit their reply, in case if there are admissions in the reply, the authorities can proceed to decide the matter on the basis of

admissions. However, in case if there is a categorical denial of the allegations and contentions made in the claim, the procedure or the practice is that of framing of issues on the disputed questions of fact and on the basis of issues that are framed, the parties are called upon to lead evidence. Further, it is always the responsibility of the person who has approached the court to prove his case and the averments made in his claim. It is only after the complainant adduces all his evidences then the opposite side is called upon to lead evidence in rebuttal.

10. Coming back to the present case, a plain reading of the order sheets would reflect that in the instant case in the reply of the petitioner there is a categorical denial of all the claims and allegations made in the election petition. The reading of the order impugned would further reveal that there were more than one allegation made against the petitioner in the election process in which she has been elected as Sarpanch, no issues whatsoever on the disputed question of fact has been recorded. The matter was taken up after a long gap on 05.08.2020 on which date either side expressed not to lead evidence.

11. Now the point to be considered is what would be the effect so far as the present petitioner, the respondent in the election petition, who has not led evidence before the election Tribunal.

12. It has to be appreciated that it was the respondent No.6 who had filed the election petition. Thus, the respondent No.6 was the complainant who was aggrieved of the petitioner's election. So it was the respondent No.6 who was required to lead evidence to prove her case and if the respondent No.6, the complainant herself, gives up her right to lead evidence, there was no occasion for expecting the petitioner, the respondent before the election Tribunal, to come forward and lead evidence particularly when the complainant herself has

not led any evidence. It could not have been expected from the petitioner, the respondent before the election Tribunal, to lead evidence against herself. Such is not the mandate of law.

13. Now so far as the provision of Rule 11 of the Rules, 1995 being mandatory, this court does not intend to reproduce the contents of those judgments which have been decided by this court, except referring to the citations wherein those law has been well settled starting from Parvatia Vs. Padmini (Supra) which is one of the first judgment rendered by this court on the issue and which has dealt with the subject matter in details and in very categorical terms it has been held that the procedure under Rule 11 being mandatory, it has to be adhered to in accordance with provisions of Code of Civil Procedure.

14. Similar issue has again been reiterated in cases of Ramsai Vs. State of Chhattisgarh & Others, WPC No.2652 of 2016 decided on 15.01.2017, in Smt. Bhupeshwari Sahu Vs. State of Chhattisgarh & Others, WPC No.1947 of 2016, decided on 21.09.2016, in 2016(4) CGLJ 382, in Balram Rathore Vs. State of Chhattisgarh & Ors, AIR 2011 CG 134 and in Smt. Sabyarani Vs. State of Chhattisgarh & Others, WPC 422 of 2017, decided on 23.09.2019.

15. Coming to the judgment relied upon by the counsel for the respondents, what needs to be considered is that, the Division Bench while deciding Writ Appeal No.68 of 2016 has in very categorical terms held that the judgment which has been tested by the Division Bench in that writ appeal was in the peculiar facts of that case and where the limited issues involved in the matter was well known on either side. Therefore, the Bench has reached to the conclusion that in that circumstances only because the issues were not framed, the order of the specified officer would not get vitiated. The Division Bench has held that the said judgment would be in the

peculiar facts of that case, whereas, the Division Bench in the very same judgment has categorically clarified that normally it is expected that the election Tribunal should first frame issues and decide the case issue-wise.”

9. Coming to the facts of the present case, it stands admitted that the impugned order has been passed without framing of issues only on the basis of the reply that the parties had submitted. In view of the discussions held by this Court while deciding WPC No. 1939/2020 in the case of Smt. Girija Devi Agrawal Vs. State of Chhattisgarh and others, this Court is of the firm view that the manner in which the Tribunal has decided the matter and ordered for recounting of votes is contrary to the statutory provisions of law and also is in contravention to the settled legal position. The impugned order Annexure P-1 dated 03.07.2020 therefore is not sustainable and deserves to be and is accordingly set aside. As a result, any consequential proceeding held that of recounting of votes also would get rendered bad and ab initio void and the same also stands set aside/quashed.
10. In view of the order dated 03.07.2020 and the action of recounting dated 06.07.2020 getting quashed, the matter stands remitted back to the respondent no.4 for deciding the same afresh from the stage it stood prior to the date of the impugned order dated 03.07.2020 was passed. While proceeding with the election petition, the respondent no.4 shall frame issues and after granting an opportunity of leading evidence to the parties only thereafter shall pass an appropriate order on merits.
11. It is made clear that the respondent no.4 while proceeding to decide

the election petition would not in any manner be influenced by any of the observations made by this Court and shall decide the matter purely on the evidence that is brought before him. It is expected that the Election Tribunal shall decide the matter as expeditiously as possible.

12. The writ petition accordingly stands disposed of.

Sd/-
P. Sam Koshy
Judge